

STATE of PROCESS

Home of Linthill.

Against

Home of Wedderburn, and others.

THe Process at *Linthill's* Instance, as having Right by Disposition from his Father against *Wedderburn, Beaton of Blebo, and John Ker of Cavers* libels upon a Disposition made by the Comprysers of *Weddeburn* in anno 1670, in Favours of *Linthill*, of an Annuity of Six Chalders of Victual, payable yearly out of the Lands of *Aitoun* with absolute Warrantice, and likewise with Real Warrantice out of the Lands of *Wedderburn*, and out of the Teinds of *Westnisbet*. And subsumes, that the Teinds of *Aitoun*, out of which the Annuity of Six Chalders of Victual is Disposed falls short in the Number of Seven Bolls, one Furlet, and Three Fourth Parts; as likewise, that the Minister of *Aitoun* obtained a Decreet of Augmentation in July 1673, taking effect from the year 1671, whereby 161 lib. 6. s. 10. d. Scots, is allocat to be payed yearly to the Minister out of the Teinds of *Aitoun*, which is an Eviction out of the Annuity of Teinds Disposed, whereupon *Linthill* concludes against *Wedderburn* as Possessor of the Warrantice Lands: And *Blebo*, in whose Person the Comprysings of the Estate of *Wedderburn* stands: And *Cavers* Possessor of the Teinds of *Westnisbet* Disposed in Warrantice, that the warrantice Lands and Teinds are Subject and lyable for the said Eviction of 161 lib. 6. s. 10. d. from the year 1671 inclusive. And for the foresaid Deficiency of the Victual, since the Date of the Disposition in anno 1670: And for both in time coming, and that *Wedderburn* and *Cavers* as Possessors of the saids Lands and Teinds respective, ought to be Decerned in Payment of the said Sum for Augmentation, and of the Values of the said Victual at the Sheriff fiars.

The Defences proponed for *Blebo*, and for the Lady *Wedderburn* elder; and for *Simpson* a real Creditor is, that they have Right to Appryngs preferable to the Pursuers Disposition:

There are two Interlocutors, one in Relation to the Augmentation, and another to the Deficiency by the First, The Lords finds the quantity of the Eviction by the Decreet of Locallity to be 161 lib. 6. s. 10. d. from the year 1671 inclusive, and sustained the Alledgeance, that *Blebo* hath Right to the Property of the warrantice Lands, and Teinds prior to the Pursuers Right to be proven *scripto*, and sustained the Answer, that *Blebo* had Restricted his Right and Insestment to a Sum of Money, and that on Payment thereof, he was Bound to denude in Favours of *Wedderburn*, or any other Person for his behove to be proven by his Oath; And a day is Assigned to *Wedderburn* to produce him for that Effect, and sustained the Alledgeance for *Wedderburn* that the Lady had a preferable Right without prejudice to the Pursuers Procurators for Declaring his Right to take effect after the Ladies Decease, and likewise sustained the same Defence for *Simpson*, that he had a preferable Right

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Right *Scripto*, and sustained the Answer, that his Right was for payment of a Debt which was payed.

And as to the short-coming, The Lords found the quantitie of the Teinds of *Aitoun*, wherein they fell short of the Six Chalders of Victual relevant to be proven, *pro ut de Jure*; And ordained *Blebo* to Depone, if his Right was not to the behove of *Vvedderburn*: As also, by another Interlocutor, if *Vvedderburn* should Amplifie the Pursuers Rights as to the Teinds of *Houndwood*, & *East-whisfield*, and put him in the peaceable Possession; accordingly, in that Case the Lords found it relevant to Debar the Pursuers from the Warrandice Lands for the Years yet to come, after the Defenders granting a valied Right thereto effeiring to the Eviction, and short-coming of Six Chalders, and put the Pursuer in Possession, and Assigned a day for that effect.

There is also an Interlocutor in the last Sheet, finding that the Warrandice was incurred by the Decreet of Augmentation, and that *Linthill* ought to have Recourse upon the Mains of *Vvedderburn*, and Teinds of *VWestnisbet*, in so far as, the principal Annuity falls short of the Six Chalders of Victual, and is Affected.

The Term is Circumduced against the Defender, *Vvedderburn* upon the 24 of June 1696, for not producing *Blebo* to Depone, and for not Proving, and Amplifieing the Pursuers Rights, and puting him in peaceable Possession in the Terms of the Act.

For proving the Quantities of the short-coming, there is adduced by the Pursuer two Witnesses, viz. *James Hude* in *Aitoun*, and *Alexander Home* of *Sklaithouse*, who Depone that there is 49 Bolls, 2 Furlets, two Fourth-parts Bear *Linlithgow* Measure, and 39 Bolls, 3 Fourth-parts Oats in Measure foresaid, payable yearly to *Linthill* furth of the saids Lands and Teinds of *Aitoun*, and knows of no other Victual payable to *Linthill* furth of the saids Lands and Teinds; And *James Hude* gives his *Causa scientia*, that he was Trustee and Servant to the Deceast *Alexander Home* of *Aitoun*, and *Charles Earl* of *Home*, and Received and Delivered the said Victual for several years to *Linthill*, and that the last Victual he Delivered to him, was about Four years ago; and *Alexander Home* Depones that he is Tacksman to the Earl of *Home* of the saids Teinds, and is Burdened with the payment of the valued Bolls, to *Linthill* these several years bygone.

Item, for proving of the Prices of the Teinds, there is produced the Sheriff-fiers from *Lambhast* 1679, to the year 1694 inclusive.

And there is *Avizandum* made with the Probation adduced, and Writs produced by the Pursuer, and the Ministers Decreet of Locallity for Fortifying the foresaids Interlocutors anent the Eviction is yet lying in Process.

There was thereafter a Petition given in by *Vvedderburn* and *Blebo*, Reclaiming against the Extraing of the Pursuers Act, and founding upon a Back-bond alledged granted by the Pursuers Father, in relation to the foresaids Teinds: And therefore, Craving the Act may be Recalled, and that the Defender may be heard on the Back-bond, which Petition with the Pursuers Answers being Considered, The Lords by their Interlocutor the 22 of February 1696, refused to Recal the Pursuers Act, but Declared they would Consider the Bill and Answers at the Adviseing of the Cause.

The Fiars from the year 1670, to the year 1679, And from the years 1694 to 1696 inclusive are nos produced, But the Pursuer offers to produce them before Extra^{ct} *Sic subscribitur*.